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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

LVRC HOLDINGS, LLC, a Nevada  
Corporation,

Plaintiff,

v.

CHRISTOPHER BREKKA, an individual;  
CAROLYN QUAIN, an individual;  
EMPLOYEE BUSINESS SOLUTIONS,  
INC., a Nevada Corporation; EMPLOYEE  
BUSINESS SOLUTIONS, INC., a Florida  
corporation and DOES I through X,

Defendants.

CHRISTOPHER BREKKA, an individual,  
CAROLYN QUAIN, an individual,  
EMPLOYEE BUSINESS SOLUTIONS,  
INC., a Nevada Corporation, EMPLOYEE  
BUSINESS SOLUTIONS, INC., a Florida  
corporation,

Defendants/Third Party Complainants,

v.

STUART P. SMITH, an individual,

Third Party Defendant.

Case No. CV-S-05-1026-KJD-GWF

**DEFENDANTS' MEMORANDUM IN  
SUPPORT OF ITS MOTION FOR SUMMARY  
JUDGMENT**

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT****I. INTRODUCTION**

This lawsuit was filed August 22, 2005. On September 6, 2005, Plaintiff LVRC Holdings, LLC ("LVRC") filed an "Ex Parte Motion Allowing Plaintiff To Copy And Secure Any Electronic Media In Defendants' Possession." (the Ex Parte Motion). By "Amended Order" dated October 17, 2005, Plaintiff's Ex Parte Motion was granted; and at approximately 7:00 a.m., on October 19, 2005, an attorney and a consultant employed by Plaintiff, accompanied by two armed United States Marshals in possession of the "Amended Order", gained access to the residence of Defendants Brekka and Quain. Thereupon, Plaintiff's Consultant took control of three computers in the residence, and made forensic copies of the three hard drives<sup>1</sup> which the Marshals took into their custody.

The Ex Parte Motion was supported solely by the following allegations of Plaintiff's attorneys and the Affidavit of Brad Greenstein.

a) "In or around November, 2004 ... Brekka used the administrative function in LVRC's computer system to access the system." (Ex Parte Motion, Page 3, lines 15 -19);

b) "In November 2004 ... Load employees actually caught Brekka/Quain in the LVRC account." (Ex Parte Motion, Page 3, line 27 – p.4, line 2);

c) "On November 2004 employees of Load were using a program that allowed them to determine **who** was on the system at any time. Brekka/Quain were actually caught in the LVRC account." (Emphasis added), (Affidavit of Brad Greenstein attached to the Ex Parte

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<sup>1</sup> Defendants' attorneys were not notified when the Marshals gained entry to Defendants' home, and it was not until 4:40 p.m. on October 19, 2005, that Defendants' attorney was provided with a copy of the Ex Parte Order. Norman H. Kirshman, Defendants' lead attorney was in Reno when the search was undertaken and learned of the search. Accordingly, it was several hours before one of Defendants' attorneys arrived at the residence and tried to comfort Mr. Brekka and Ms. Quain, husband and wife, both of whom were extremely upset.

1 Motion, Paragraph 15 and 16).<sup>2</sup>

2 Defendants will establish beyond any doubt that the assertion made by Plaintiff's attorney  
3 in the Ex Parte Motion that Defendants Brekka/Quain were "actually caught in the LVRC  
4 account," repeated under oath by Brad Greenstein as personal knowledge – not information and  
5 belief, **were false**; and were either known or should have been known by Plaintiff's lead attorney  
6 and Mr. Greenstein, to be false when published and continue to be false. Plaintiffs cannot  
7 establish **who** used the administrative password to access Load's computers. Nick Jones, Load's  
8 president and manager, never attempted to trace the unauthorized access to its source. It is also  
9 undisputed that Mr. Brekka did not delete the e-mail he had previously saved on his LVRC  
10 computer when he left LVRC upon termination of his employment in mid-September 2003.  
11 Included in Mr. Brekka's saved e-mail was a message from Nick Jones to Mr. Brekka which  
12 contained the administrative username and password to access LVRC's account on Load's  
13 servers. It is unknown when that e-mail was deleted or how many people had access to the  
14 computer before the e-mail was deleted. Finally, there is no evidence that anyone using  
15 defendants' personal computers accessed Load's secure website on November 19, 2004. It  
16 follows that plaintiff cannot meet its burden to prove Mr. Brekka or Ms. Quain used the  
17 administrative username and password to access LVRC's account on Load's servers on  
18 November 19, 2004.

19 In addition, as the direct consequence of plaintiff's refusal to provide financial  
20 information and documents requested by Defendants during discovery, the parties entered into the  
21 attached Stipulation barring Plaintiff "from using any information derived from documents  
22 requested in Defendants' Request For Production of Documents to Plaintiff and Third Party  
23 Defendant, Request Nos. 11, 12, 15 and 16, dated May 3, 2006 and from using any such  
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25 <sup>2</sup> For the convenience of the Court, the Greenstein Affidavit is attached hereto.

documents as evidence or as a basis for expert opinions in the case.” That stipulation gave plaintiff until July 17, 2006 to produce the requested documents or be barred from submitting evidence derived from such documents. On July 31, 2006, plaintiff submitted an expert report opining that LVRC’s “loss” was \$1,143,898.00. It is obvious plaintiff’s expert arrived at that figure based upon information from documents LVRC had refused to produce; and it is therefore barred as evidence in this case.

## II. STATEMENT OF UNDISPUTED FACTS<sup>3</sup>

### Background

1. Christopher Brekka and Carolyn Quain are husband wife. As is the case with all parties and most witnesses involved in this lawsuit, with the exception of Nick Jones of Load, they are recovering substance abuse addicts who met at or attended meetings of Narcotics Anonymous, (“NA”) an organization modeled after Alcoholics Anonymous, (“AA”).

2. Stuart Smith, principal owner of LVRC, has known Ms. Quain for approximately 20 years. He has known Mr. Brekka for approximately 8 years. (TR Smith, 15:22-23; 16:9.)

3. In or about 1999 Brekka established Employee Business Solutions, Inc. of Florida (“EBS –Fla”); and Employee Business Solutions, Inc. of Nevada (“EBS-Nev”) in or about 2004. Brekka is the only employee of the EBS Companies and provides consulting services to companies including those operating residential treatment centers, including referrals, internet marketing, drug and alcohol testing policies and related services. (TR Brekka, 10:12 – 12:12; 14:21-25.)

4. In or about April 2003, Brekka commenced employment with LVRC, following discussions with Stuart Smith, which contemplated an ownership interest for Brekka in a new for

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<sup>3</sup> Reference to depositions are designated by the name of the deponent, page and line, i.e. TR Brekka, Page \_\_\_, Line(s) \_\_\_. (True and correct copies of all transcript and expert report citations are attached hereto as Exhibit A.)

1 profit residential treatment center for drug addicted persons who had satisfactory financial  
2 resources or acceptable insurance coverage. (TR Brekka, 83:25 – 85:22.)

3 5. While employed by LVRC, Brekka, as well as other employees referred persons  
4 seeking assistance to other residential centers whose financial requirements were not as strict as  
5 LVRC. (TR Brekka, 90:17 – 92:14.)

6 6. Part of Brekka's responsibilities for LVRC were marketing and interaction with  
7 Load, a company utilized by LVRC to provide e-mail, web-site and related services. (TR Brekka,  
8 93:24 – 94:12.)

### 10 **LVRC's Computer System**

11 7. On or about June 2, 2003, an "administrative function" was established with Load  
12 through Nick Jones, LVRC's primary contact at Load. Nick Jones informed Brekka, through an  
13 e-mail to Brekka's LVRC e-mail address, that the Administrative Function had been established.  
14 The e-mail included the "login" and "password". (TR Brekka, 95:2-14; Ex 10.)<sup>4</sup>

15 8. LVRC provided Brekka with a computer during his employment from April –  
16 September 2003. When Brekka left LVRC, the computer remained in his former office, which  
17 was assigned to Brad Greenstein. (TR Greenstein, 38:3-11.)

18 9. Brekka's LVRC computer was used after his departure from LVRC by several  
19 LVRC employees, identified generally by Brad Greenstein. (TR Greenstein, 32:10-33:11.)

20 10. During his employment with LVRC, Brekka saved all relevant and pertinent e-  
21 mails he received at his LVRC e-mail address. Included in his saved e-mail was the June 2, 2003  
22 e-mail Nick Jones sent him with the login and password for the administrative function to access  
23 Load's website. Brekka did not delete, modify or do anything to change his saved e-mails or  
24

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25 <sup>4</sup> The e-mail containing the Administrative Function Loggin password was provided to Defendants' attorneys on or  
26 about June 23, 2006 by Plaintiff's attorney along with other documents from Plaintiff's files in conjunction with a  
27 supplemental response to outstanding discovery requests.  
28

1 other data on his LVRC computer upon his departure from LVRC or at any time thereafter.  
2 (Brekka Declaration ¶¶ 2-4.) (A true and correct copy of Chris Brekka's signed declaration is  
3 attached hereto as Exhibit B.)

4 11. On or about June 2, 2003, Brekka's LVRC e-mail account was activated. Until  
5 that time, Brekka had used his personal e-mail address. (*See id.* at ¶ 2.)

6 12. David Greetham, LVRC's computer forensics expert, recovered the June 2, 2003  
7 e-mail from Jones to Brekka containing the username and password for the administrative  
8 function from the hard drive of Brekka's LVRC computer after it had been deleted. There is no  
9 evidence when that e-mail was deleted. (Supplemental Report of David Greetham, produced July  
10 31, 2006.)

11 13. Any person who had access to Brekka's LVRC computer after Brekka left the  
12 employ of LVRC in September 2003, and before the June 2, 2003 e-mail was deleted, would have  
13 been able to view that e-mail. (TR Jones, 43:4-15.)

14 14. When Brekka and Smith could not agree on a contract to cover his employment  
15 and purchase of an interest in LVRC, Brekka's employment with LVRC terminated in or about  
16 mid-September 2003. (TR Brekka, 200:16 – 201:11.)

17 15. After Brekka's employment terminated and he left LVRC, Greenstein had  
18 approximately fifty (50) conversations with Nick Jones about LVRC's computer needs and  
19 Load's services. (TR Greenstein, 41:5-13.)

### 20 **The Investigation of the November 19, 2004 Access of Load's System**

21 16. On November 19, 2004, Jones observed someone had logged on to Load's system  
22 using the [cbrekka@FountainRidge.com](mailto:cbrekka@FountainRidge.com) login. (TR Jones, 13:1-25.)

1           17. Load uses "Live Person" software that tracks users on its system. The software  
2 enables Load to identify past visitors to its website; and monitor clients that are logged on to the  
3 website. (TR Jones, 15:19 – 16:10.)

4           18. The "Load Program" referred to at Paragraph 17 of the Complaint, and the Ex  
5 Parte Motion did not have the capability of identifying the person or persons who used the  
6 Administrative Function login and password. (TR, Jones, 16:23-24; 20:8-10; 21:4-9; 22:3-8;  
7 31:14 – 32:4.)

8           19. Jones identified the computer accessing Load's system with the  
9 [cbrekka@FountainRidge.com](mailto:cbrekka@FountainRidge.com) login on November 19, 2004 by the IP address 199.107.156.30.  
10 (TR Jones, 38:21-23.)

11           20. The person accessing Load's secure computer system using LVRC's  
12 administrative function could not view LVRC's employees e-mail. (TR Jones, 29:20-22.)

13           21. An IP address is the internet address location from which the internet session is  
14 taking place. An IP address can be traced. The FBI can use an IP address to trace a spammer to a  
15 specific residence or a virus to a specific location. (TR Jones, 22:3-17.)

16           22. Jones identified the provider of the IP address used as CERTnet. He testified that  
17 CERTnet, as the provider of that IP address, would have a much greater likelihood of identifying  
18 where the IP address came from. Nobody at LRVC asked Jones to investigate the location of that  
19 IP address, and Jones ended his inquiry at that point. (TR Jones, 38:24 – 40:2.)

20           23. Greetham examined the hard drives of Brekka and Quain's three personal  
21 computers. (Greetham Report ¶ 3.17.) His report provide no evidence that one of Brekka and  
22 Quain's three personal computers was used to access Load's website using the administrative  
23 function on November 19, 2004.

1           24. Greetham's report does, however, contain the following opinion: "it is evident that  
2 unauthorised (sic) access to the LOAD system was obtained by the Brekka computers labeled  
3 DAG-001 & DAG-002 as recently as 9/2005." (Greetham Report § 4(c).) Greetham's opinion on  
4 this point is unequivocally wrong. It is undisputed that Brekka's old administrative function  
5 login and password were deactivated on November 19, 2004. (TR Jones, 40:3-18; Ex. B.)  
6

7           25. Brekka testified under oath that at no time did he attempt to access LVRC's  
8 account on Load's computer system. (TR Brekka, 6:15-18.)

9 **LVRC's Damage Claims**

10           26. Defendants requested all LVRC's balance sheets, income statements, Federal Tax  
11 records for the years 2002-2005, and/or statements of cash flow LVRC intends to rely on in this  
12 matter. (See Def.'s Request for Prod. of Docs. to Pl. and Third Party Def. Nos. 11, 12, 15, and  
13 16 dated May 3, 2006.) (A true and correct copy of defendants' requests for production are  
14 attached as Exhibit C.)  
15

16           27. LVRC refused to produce any of the requested documents, and entered into a  
17 stipulation that it would have until July 17, 2006 to produce said documents, and if LVRC failed  
18 to do so by that date, plaintiff would be barred from basing a damage claim upon information  
19 derived from the documents and from using any such documents as evidence or as a basis for  
20 expert opinions. The Court approved the stipulation in an Order dated June 30, 2006. (A true and  
21 correct copy of the approved stipulation is attached as Exhibit D.)  
22

23           28. Plaintiff did not produce the documents.

24           29. Plaintiff confirmed, in a formal meet and confer on July 20, 2006, that it would not  
25 be seeking damages based on the performance of LVRC after Brekka left. (TR July 20 Meet and  
26 Confer, 14:8-11.)  
27  
28



1           30. On July 31, 2006, Dr. Alan Goedde, plaintiff's damages expert, submitted a report  
2 placing plaintiff's damages at \$1,143,898.00. (Goedde Report, ¶ 8.)

3           31. His report calculated that 100% of LVRC's marketing and advertising expenses  
4 were lost due to Brekka's actions. (*Id.* at ¶ 14; Schedules 2-3.)

5           32. He further found, "Based on my discussions with the company officers, it was  
6 estimated **that the effectiveness** of [all non-internet marketing and advertising] had been reduced  
7 by approximately 50% due to the actions of Mr. Brekka." (*Id.* at ¶ 16.)

8           33. Finally, Goedde calculated the amount LVRC lost due to the time its employees  
9 spent responding to this litigation. His calculation included that assumption that "Based on the  
10 size of the company, and annual salary of \$200,000 per year [for Stuart Smith] appears  
11 reasonable." (*Id.* Schedule 4.)

12           34. On July 27, 2006, Smith stated, in writing under oath, that his objective in this suit  
13 is to "[r]eceive compensation for the damages suffered as a result of the unlawful activities...."  
14 (Statement of Stuart Smith dated July 27, 2006.)

### 15 16 17 **III. ARGUMENT**

18           A court must grant a motion for summary judgment where there is no genuine issue as to  
19 any material fact and the moving party is entitled to judgment as a matter of law. *Foremost Ins.*  
20 *Co. v. Bowden*, 2:04-CV-174, 2006 WL 1966745, \*2 (D.Nev. July 12, 2006). "'Where the record  
21 taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no  
22 genuine issue for trial' and summary judgment is proper." *Id.* (quoting *Matsushita Elec. Indus.*  
23 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

#### 24 25 **A. LVRC Has Not Presented Any Evidence To Identify Defendants As The** 26 **Persons Who Accessed Its Load Account Using The Administrative Function** 27 **On November 19, 2004.**

28           LVRC can offer no evidence that would allow a rational trier of fact to find that

1 Defendants accessed LVRC's information on Load's computer system on November 19, 2004. A  
2 claim under the Computer Fraud and Abuse Act ("CCFA"), 18 U.S.C. § 1030(a)(4), requires a  
3 plaintiff to present evidence on four elements: (1) defendant has accessed a "protected computer;"  
4 (2) has done so without authorization or by exceeding such authorization as was granted; (3) has  
5 done so "knowingly" and with "intent to defraud"; and (4) as a result has "further[ed] the  
6 intended fraud and obtain[ed] anything of value."<sup>5</sup> *P.C. Yonkers, Inc. v. Celebrations the Party*  
7 *and Seasonal Superstore, LLC.*, 428 F.3d 504, 508 (3rd Cir. 2005) (quoting statute). Proving a  
8 violation of the CCFA requires a detailed examination of hard evidence, and, as a practical  
9 matter, proving civil liability under the CCFA will mirror the standard for proving criminal  
10 liability. *See id.* at 509. In *P.C. Yonkers*, it was uncontroverted that defendants had accessed  
11 plaintiffs' computer system after leaving plaintiffs' employment. *Id.* The Third Circuit, however,  
12 affirmed the district court's decision to deny plaintiffs' request that defendants be enjoined from  
13 using plaintiffs' trade secrets to operate competing stores because plaintiffs could not prove  
14 defendants had obtained anything of value through the unauthorized access. *Id.* Plaintiffs urged  
15 the court to draw inferences of intent and that the defendants obtained valuable information from  
16 the mere fact that unauthorized access had been shown. *Id.* The court rejected that invitation,  
17 holding, "the elements of the claims asserted are part of a *plaintiff's* burden. That information was  
18 taken does not flow logically from mere access." *Id.* (emphasis added). Similarly, in this case,  
19 plaintiff must prove that it was defendants who used LVRC's administrative function to access  
20 Load's computer system.

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24 <sup>5</sup> Plaintiff also asserted a claim under the Stored Communications Act, 18 U.S.C. § 2701, *et seq.* The Stored  
25 Communications Act access to "a wire or electronic communication" without authorization, or while exceeding  
26 authorization. Plaintiff's Stored Communications Act claim is not viable for the same reason its CCFA claim is not  
27 viable: Plaintiff cannot prove who committed the unauthorized access of Load's computer system, a necessary  
28 element for a claim under either statute. Plaintiff's Stored Communications Act claim fails for an additional reason,  
however. There is no evidence in the record that the person who accessed Load's system made any attempt to access  
a stored electronic communication. Indeed, Nick Jones testified it was impossible for someone using the  
administrative function to view LVRC's stored e-mail. (Fact 20.)

1 Defendants have not found cases in the civil context where the identity of an intruder into  
2 a computer system was at issue. Identity is almost never at issue in criminal cases either, and  
3 there is no guidance to be had from that context.<sup>6</sup> Commentators have, however, provided some  
4 explanation of the type of evidence sufficient to identify an intruder into a computer system.  
5 “The key in most cases will be recovering the computer used to launch the attack. If the police  
6 can find and analyze [the suspect’s] home computer, it will likely yield damning evidence. The  
7 records kept by most operating systems can allow forensics experts to reconstruct with surprising  
8 detail who did what and when.” *Digital Evidence and the New Criminal Procedure*. Orin S.  
9 Kerr, 105 Columbia L. Rev. 279, 287 (2005). Merely knowing a certain internet account or IP  
10 address originating from a particular location was used to gain access to a computer system is  
11 insufficient to establish the user’s identity. *See id.* at n. 15.  
12

13  
14 In this case, all plaintiff is able to prove is that someone using the administrative function  
15 with Brekka’s login and password accessed Load’s computer system on November 19, 2004.  
16 That access occurred fourteen months after Brekka left LVRC. Brekka did not delete the e-mail  
17 in his LVRC account before leaving. Neither LVRC nor Load conducted any investigation to  
18 determine where the IP address that accessed Load’s computer system originated. Instead,  
19 plaintiff obtained an ex parte search order based on Greenstein’s affidavit which falsely claimed  
20 that Load employees “actually caught Brekka/Quain in the LVRC account.” Plaintiff’s computer  
21 forensics expert copied and examined the three computer hard drives from Brekka and Quain’s  
22 personal computers. Plaintiff’s expert did not uncover any evidence that defendant’s personal  
23 computers accessed Load’s website on November 19, 2004. Plaintiffs have not presented any  
24

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25  
26 <sup>6</sup> There appears to be only one criminal case where the defendant challenged the sufficiency of the evidence as to his  
27 identity on appeal. *See United States v. Ray*, 428 F.3d 1172, 1174 (8th Cir. 2005). In *Ray*, the court made short  
28 work of the defendant’s sufficiency challenge. Defendant admitted that he used his computer and logged onto the  
Internet several times a day, and three of the emails sent to the Victim traced back to the Internet address he was  
using on the given day and time the extortion emails were sent. Further, an FBI computer forensic expert found three  
of the emails and other incriminating documents on the hard drive of Ray’s computer.

1 evidence that would establish Brekka or Quain accessed Load's system. The mere fact that  
2 **someone** accessed Load's system using Brekka's login and password is not enough evidence for  
3 a rational jury to determine that the identity of that someone was Chris Brekka or Caroline Quain.

4 **B. The Court's Order Regarding Plaintiff's Financial Records Must Be**  
5 **Enforced, And Plaintiff Must Be Barred From Submitting Its Evidence On**  
6 **Damages.**

7 LVRC's alleged marketing damages are nothing more than an attempt at an end-run  
8 around the stipulation barring it from presenting evidence of its economic losses. Pursuant to the  
9 stipulation and order, LVRC may not introduce evidence of its damages. "A stipulation between  
10 parties, particularly in the litigation context when approved by the court is a binding contract  
11 enforceable on the basis of contract principles." *Stubbs v. Wyndham Nassau Resort and Crystal*  
12 *Palace Casino*, 447 F.3d 1357, 1365 (11 Cir. 2006). In *Stubbs*, the Eleventh Circuit reversed the  
13 district court's *sua sponte* dismissal of the case based on lack of personal jurisdiction because the  
14 parties had stipulated that service of process made on the original defendants would be binding on  
15 the defendants. *Id.* A stipulation is given preclusive effect where counsel for both parties were  
16 involved in negotiating and drafting the stipulation. *See Varga v. Rockwell Intern. Corp.*, 242  
17 F.3d 693, 699 (6th Cir. 2001) (holding that stipulation was binding on both the district court and  
18 circuit court where plaintiffs' counsel participated in its drafting and agreed to its substance); *see*  
19 *also Riley v. Walgreen Co.*, 233 F.R.D. 496, 500 (S.D.Tex. 2005) (compelling defendant to  
20 answer interrogatories and finding that defendant had waived any objection to the interrogatories  
21 where it had stipulated to answer them by a certain date and failed to do so).

22  
23  
24 Plaintiff's "marketing" and "advertising" losses are merely economic losses recast in  
25 different terminology. LVRC clearly stipulated that it could not seek damages based on figures  
26 derived from its balance sheets, income statements, Federal Tax records for the years 2002-2005,  
27 and/or statement of cash flow. LVRC also agreed that it would be barred from using any such  
28

1 documents as evidence or as a basis for expert opinions. Plaintiff's damage claims, however, are  
2 clearly derived from information based on financial records it refused to produce during  
3 discovery.

4 Dr. Goedde determined that the **effectiveness** of all plaintiff's **non-internet** marketing  
5 and advertising was reduced by 50%. That determination must necessarily be based on plaintiff's  
6 financial records. In order to determine whether the effectiveness of plaintiff's advertising was  
7 compromised by the intrusion into Load's system, it is necessary to compare advertising costs to  
8 plaintiff's bottom line throughout the relevant time periods. Similarly, Goedde determined that  
9 **all** LVRC's internet marketing and advertising was rendered ineffective due to the intrusion into  
10 Load's system.<sup>7</sup> The only way to determine that all internet advertising was rendered totally and  
11 completely ineffective is to take LVRC's financial performance into account.

12  
13 While Goedde could not rely on financial documents to form his opinions about the  
14 effectiveness of LVRC's advertising, he did base his findings on conversation with LVRC's  
15 officers. Most importantly, however, defendants do not have access to LVRC's financial  
16 statements, which is essential if they are to dispute Goedde's claim that the effectiveness of  
17 LVRC's advertising was compromised.

18  
19 Finally, Goedde asserted that a salary of \$200,000 dollars for Smith "appears reasonable"  
20 based on LVRC's size. Again, this figure must be based on the company's financial position, and  
21 defendants would need access to LVRC's financial records to dispute this claim.

#### 22 23 **IV. CONCLUSION**

24 For the foregoing reasons, defendants' motion for summary judgment should be granted.  
25 Alternatively, plaintiff should be precluded from introducing any evidence on the issue of  
26

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27 <sup>7</sup> Goedde reduced the percentage of money lost on online internet advertising to 50% for the time period lasting from  
28 November 20, 2004 to August 22, 2005 because the unauthorized access to LVRC's information was stopped.  
Again, Goedde's determination of the effectiveness of the advertising must be related to the bottom line.

1 damages.

2  
3 Dated this 31st day of August, 2006

Respectfully submitted,

4 PARSONS BEHLE & LATIMER

5  
6 By: /s/ Norman H. Kirshman

7 Norman H. Kirshman

8 Robert L. Rosenthal

9 Shelley L. Lanzkowsky

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Las Vegas, Nevada 89101

Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of August, 2006 , I caused the following to be served via the Court's CM/ECF system, a true and correct copy of the foregoing "**DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**" to:

Wade B. Gochmour, Esq.  
Haney Woloson & Mullins  
1117 South Rancho Drive  
Las Vegas, Nevada 89102

/s/ Stefan Brutsch  
Employee of Parsons Behle & Latimer